

## **REMARKS/ARGUMENTS**

This Amendment After Final is in response to the Office Action mailed July 21, 2004.

### **35 U.S.C. §103 Rejections**

Claims 1-12 were rejected under 35 U.S.C. §103 for allegedly being unpatentable over Jensen, U.S. Patent No. 5,571,080, in view of Martz, U.S. Patent No. 5,656,167. According to the Office Action, in view of Martz it would have been obvious to one having ordinary skill in the art to modify Jensen with the addition of a plurality of parallel spaced reinforcing members in order to reduce stretch in the dressing. In response to the Applicant's previous argument concerning these references disclosing only wound dressings, but not wound closure devices, the Office Action indicates that "nothing in either the Jensen or Matz patents precludes the disclosed devices from being used to close wounds." If it were the standard that references could be combined as prior art to support a rejection so long as they did not include language *precluding* them from being used in a claimed manner, seldom would patents ever issue. It is respectfully submitted that the Applicant's invention cannot be rendered obvious by references that would not be combined to solve the problem that Applicant faced. As the Federal Circuit explained in *In re Wright*:

The problem solved by the invention is always relevant. The entirety of a claimed invention, including the combination viewed as a whole, the elements thereof, and the properties and purpose of the invention, must be considered. Factors including unexpected results, new features, solution of a different problem, novel properties, are all considerations in the determination of obviousness in terms of 35 U.S.C. §103. When such factors are described in the specification they are weighed in determining, in the first instance, whether the prior art presents a prima facie case of obviousness. ... When such factors are brought out in prosecution before the PTO, they are considered in determining whether a prima facie case, if made based on the prior art, has been rebutted. ... In either case, the requisite view of the whole invention mandates consideration of not only its structure but also its properties and the problem solved.

848 F.2d 1216, 6 USPQ2d 1959, 1962 (Fed. Cir. 1988)1962. Neither the surgical dressing of Jensen nor the breathable membrane of Martz are directed to the problems associated with a

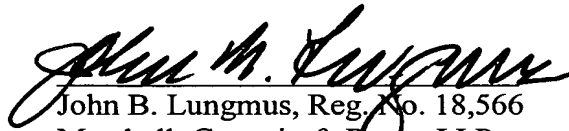
wound closure dressing to which the Applicant's invention is directed. It is respectfully submitted that the rejection under 35 U.S.C. §103(a) is improper.

Claim 1 has also been amended to recite: "... a multiplicity of flexible but substantially non-stretchable reinforcing members secured to and extending in spaced parallel relation *in a single direction and in no other directions* across said dressing for preventing stretching of said dressing *only* in the direction parallel with said members while allowing stretching and contraction of said dressing in all other directions" (emphasis added). In view of the amendments to claim 1, all claims pending in the application now require the reinforcing members to extend only in a single direction, and to prevent stretching of the dressing only in that direction, while allowing stretching and contraction of the dressing in all other directions. It is therefore respectfully requested that Applicant's arguments that the filaments of the instant invention are arranged only in parallel with each other so that stretching may occur in every direction except directions parallel with the reinforcing members is not irrelevant. Rather, the Applicants' claims are patentably distinguishable over the proposed combination of Jensen and Martz.

The Examiner's reconsideration and favorable action are respectfully solicited.

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Respectfully submitted,

  
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